REMARKS

Claims 1-22 were pending in the application before entering this amendment.

The examiner rejects claims 1-22 under 35 U.S.C. § 103 (a) as being unpatentable over Chaddha et al. (U.S. Patent 5,768,535) in view of Fan et al. (U.S. Patent 6,408,005).

Claims 1-22 remain in the application after entering this amendment.

Applicant adds no new matter and requests reconsideration.

Claim Rejections Under § 103

The examiner rejects claims 1-22 as obvious over Chaddha in view of Fan. Applicant disagrees for the reasons that follow.

Claim 1 recites *transmitting the enhancement layer if there is enough bandwidth available to transmit the enhancement layer responsive to determining the bandwidth associated with transmitting the base layer*. Claims 13 and 17 include similar limitations.

The examiner acknowledges that Chaddha does not teach transmitting the enhancement layer if there is enough bandwidth available to transmit the enhancement layer responsive to determining the bandwidth associated with transmitting the base layer, as recited in the claims.[1] The examiner, however, suggests that Fan's dynamic rate control scheduler provides the missing element.[2] Applicant disagrees for the reasons below.

Fan discloses a Dynamic Rate Control (DRC) scheduler for scheduling cells for service in a generic Asynchronous Transfer Mode (ATM) switch. In Fan, each traffic stream is rate-shaped according to a rate that consists of a minimum guaranteed rate and a dynamic component computed based on congestion information within the switch.[3] Fan's DRC guarantees a minimum throughput for each stream,[4] but it may or may not distribute the unused bandwidth.[5] According to Fan, the distribution of unused bandwidth in the DRC may depend on downstream bottlenecks in the network.[6] Because providing a stream with more bandwidth than a minimum guaranteed rate could exacerbate the congestion at the downstream bottleneck.[7]

In contrast, claim 1 recites *transmitting the enhancement layer if there is enough bandwidth available to transmit the enhancement layer.* While Fan provides a minimum rate

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[1] Office action, page 2.
[2] Office action, page 3.
[3] Fan, abstract.
[4] Fan, column 5, lines 54-56.
[5] Fan, column 7, lines 1-3.
[6] Fan, column 5, lines 60-62, and column 8, lines 40-43.

guarantee for each stream, it does not necessarily transmit the enhancement layer even if there is available excess bandwidth. Instead Fan's Dynamic Rate Control (DRC) scheduler takes into account the downstream bottlenecks in determining whether to allocate the unused bandwidth to each stream.[8] That is, Fan does may not transmit any data, much less the enhancement layer recited, even if there is sufficient excess bandwidth.[9]

Claim 1, 13, and 17, and their respective dependent claims 2-12, 14-16, and 18-22, are thus in condition for the examiner's allowance because they are patently distinguishable from Chaddha, Fan, or their combination.

Conclusion

For the foregoing reasons, applicant requests reconsideration and allowance of all pending claims. The applicant encourages the examiner to telephone at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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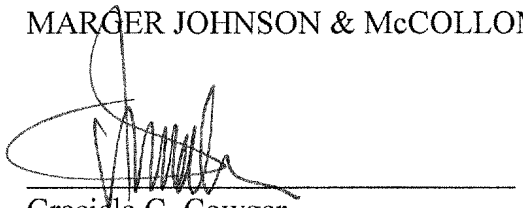

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[7] Fan, column 4, lines 19-22.
[8] Fan, column 8, lines 6-9.
[9] Fan, column 4, lines 7-12.